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APPLICATION NO.	FILE	NG DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO. CONFIRMATION NO.		
09/885,853	06/	/20/2001	William E. Bernier	END920010026US1 4080		
5409	7590	06/11/2003				
ARLEN L. OLSEN				EXAMINER		
SCHMEISER, OLSEN & WATTS 3 LEAR JET LANE				COLEMAN, WILLIAM D		
SUITE 201 LATHAM, N	TE 201 HAM, NY 12110		•	ART UNIT	PAPER NUMBER	
•				2823		
				DATE MAILED: 06/11/2003		

Please find below and/or attached an Office communication concerning this application or proceeding.

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	Application No.	Applicant(s)	(-					
Advisory Action	09/885,853	BERNIER ET AL.						
-	Examin r	Art Unit						
	W. David Coleman	2823						
The MAILING DATE of this communication appears on the cover sheet with the correspond nce address								
THE REPLY FILED 30 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.								
PERIOD FOR RE	PLY [check either a) or b)]							
a) The period for reply expiresmonths from the mailing of the period for reply expires on: (1) the mailing date of this Advevent, however, will the statutory period for reply expire later the ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS 706.07(f).	isory Action, or (2) the date set forth in th an SIX MONTHS from the mailing date o FILED WITHIN TWO MONTHS OF TH	f the final rejection. E FINAL REJECTION. S	See MPEP					
Extensions of time may be obtained under 37 CFR 1.136(a). The dath nave been filed is the date for purposes of determining the period of extensions CFR 1.17(a) is calculated from: (1) the expiration date of the shortened (b) above, if checked. Any reply received by the Office later than three moteraned patent term adjustment. See 37 CFR 1.704(b).	sion and the corresponding amount of the statutory period for reply originally set in	fee. The appropriate ext the final Office action; or	ension fee under (2) as set forth in					
1. A Notice of Appeal was filed on Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.								
2. The proposed amendment(s) will not be entered because:								
(a) They raise new issues that would require further consideration and/or search (see NOTE below);								
(b) ☐ they raise the issue of new matter (see Note below);								
(c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or								
(d) they present additional claims without cancel NOTE:	ing a corresponding number of	finally rejected clair	ns.					
3. Applicant's reply has overcome the following rejections.	ction(s):							
 4. Newly proposed or amended claim(s) would canceling the non-allowable claim(s). 		separate, timely filed	d amendment					
5.⊠ The a)☐ affidavit, b)☐ exhibit, or c)⊠ request for reconsideration has been considered but does NOT place the application in condition for allowance because:								
6. The affidavit or exhibit will NOT be considered becaused by the Examiner in the final rejection.	cause it is not directed SOLELY	to issues which we	re newly					
7. For purposes of Appeal, the proposed amendment explanation of how the new or amended claims we			and an					
The status of the claim(s) is (or will be) as follows:								
Claim(s) allowed: 7 and 8.								
Claim(s) objected to:								
Claim(s) rejected: 1-6 and 9-20.								
Claim(s) withdrawn from consideration: 21-40.								
8. \square The proposed drawing correction filed on is	a) ☐ approved or b) ☐ disap	proved by the Exan	niner.					
9. Note the attached Information Disclosure Stateme	nt(s)(PTO-1449) Paper No(s).	·	Λ					
10. Other:	,	mul	ol					
		W. David Colemar Primary Examiner Art Unit: 2823						

U.S. Patent and Trademark Office PTO-303 (Rev. 04-01)

DETAILED ACTION

- 1. The reply filed May 30, 2003 is improper because it is not limited to appeal or to amendment as specified in 37 CFR 1.113: 37 CFR § 1.113 Final rejection or action.
- (a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicants, or for ex parte reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in §1.114 or § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section. For final actions in an inter partes reexamination filed under § 1.913, see § 1.953. See also MPEP 714.13:
- 2. Except where an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner, compliance with the requirement of a showing under 37 CFR 1.116(c) is expected in all amendments after final rejection. Failure to properly reply under 37 CFR 1.113 to the final rejection results in abandonment. A reply under 37 CFR 1.113 is limited to:

 (A) an amendment complying with 37 CFR 1.116; (B) a Notice of Appeal (and appeal fee); or

 (C) a request for continued examination (RCE) filed under 37 CFR 1.114 with a submission (i.e., an amendment that meets the reply requirement of 3~ CFR 1.111) and the fee set forth in 37 CFR 1.17(e). RCE practice under 37 CFR 1.114 does not apply to utility or plant patent applications filed before June 8, 1995 and design applications.

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3. Further examination of the application may be obtained by filing a continued prosecution

application (CPA) under 37 CFR 1.53(d), if appropriate. See MPEP § 201.06(d).

Further see MPEP 1205, last paragraph:

4. Failure to remove all grounds of rejection and otherwise place an application in condition

for allowance or to file an appeal after final rejection will result in the application becoming

abandoned, even if one or more claims have been allowed, except where claims suggested for

interference have been copied.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to W. David Coleman whose telephone number is 703-305-0004.

The examiner can normally be reached on 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Olik Chaudhuri can be reached on 703-306-2794. The fax phone numbers for the

organization where this application or proceeding is assigned are 703-308-7722 for regular

communications and 703-308-7721 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is 703-308-0956.

David Coleman

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Primary Examiner

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WDC

June 4, 2003